PRESENT: Powell, C.J., Kelsey, McCullough, Chafin, Russell, and Mann JJ., and Millette, S.J.

DEREK WADE GINEVAN

v.

COMMONWEALTH OF VIRGINIA

Record No. 250051

OPINION BY
JUSTICE WESLEY G. RUSSELL, Jr.
NOVEMBER 25, 2026

FROM THE COURT OF APPEALS OF VIRGINIA

Derek Wade Ginevan appeals a decision of the Court of Appeals affirming his conviction for violating Code § 18.2-308.2 by possessing a firearm after previously having been convicted of a felony. Specifically, Ginevan argues that, as applied to him, Code § 18.2-308.2 violates the Second Amendment because the Commonwealth failed to show that the statute disarming him is in keeping with the nation's historical tradition regarding the right to keep and bear arms. On this record, we agree with Ginevan and reverse the judgment of the Court of Appeals.

I. BACKGROUND

On January 24, 2023, police responded to a possible domestic disturbance where they encountered Ginevan in a dispute with a woman. The woman claimed that Ginevan had grabbed a shotgun and pointed it at her. Although Ginevan admitted to possessing the shotgun, he denied having pointed it at the woman. He told police that he had the shotgun for protection. After Ginevan confirmed that he was a convicted felon, he was arrested and charged with possessing a firearm as a convicted felon in violation of Code § 18.2-308.2.

A review of Ginevan's prior criminal history revealed various and sundry felony convictions.[1] In 2011, Ginevan was convicted of possession with intent to distribute a Schedule

[1] Because Ginevan ultimately entered into a plea agreement on the amended charge for possession of a firearm by a convicted felon, the record is short on information concerning his

I/II controlled substance. Over the following four years, he was convicted three times for felony probation violations. Then, in 2018, Ginevan was convicted of obtaining money by false pretenses as well as possession of ammunition by a convicted felon. Notably, pursuant to Code § 17.1-805(C), the General Assembly has classified possession of ammunition by a convicted felon as a violent felony, but none of Ginevan's other felony convictions are so classified.[2]

Before trial, Ginevan filed a motion to dismiss the indictment against him, challenging the constitutionality of Code § 18.2-308.2 as it applied to him. Specifically, Ginevan argued that he should be considered part of "the people" for purposes of the Second Amendment, that it was the Commonwealth's burden to prove "that she can strip him of his right to keep and bear arms[,]" and that the Commonwealth could not meet that burden because there is no longstanding historical analogue to Code § 18.2-308.2.

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prior convictions. A brief list of his convictions was set forth in the general district court's "CHECKLIST FOR BAIL DETERMINATIONS," and the Commonwealth detailed his prior felony convictions in its opposition to Ginevan's motion to dismiss the indictment against him. Apart from those two documents identifying the convictions by name, the record in the trial court provides no information regarding the circumstances underlying the convictions. Accordingly, nothing in the record properly before us establishes that any act of actual violence was associated with the actions that led to Ginevan's felony convictions.

Recognizing this, the Commonwealth sought to expand the record in this Court by including information regarding the nature of the underlying crimes in its filings here, contending that the Commonwealth could have adduced such evidence in the trial court and very well may have but for the decision to resolve the matter by way of conditional plea agreement. Such information, however, was not part of the record in either the trial court or the Court of Appeals. In exercising our appellate jurisdiction, our task is "to review and to correct errors of lower courts[,]" and "we are limited to the record of the proceedings which occurred in the lower court and [that has been] certified to us[.]" *Rountree v. Rountree*, 200 Va. 57, 63 (1958). Accordingly, "extrinsic evidence may not be received by this [C]ourt to contradict or supplement the record." *Id.*

As a result, we have not considered the information proffered by the Commonwealth in this Court that was not part of the record in the proceedings below.

[2] At oral argument, the Commonwealth conceded that Ginevan's conviction for possession of a Schedule I/II substance with the intent to distribute was not a violent felony.

The trial court denied Ginevan's motion to dismiss. It found that Ginevan had been "classified in the Commonwealth of Virginia as a violent felon" and that "the plain text of the Second Amendment does not apply to convicted violent felons[,]" effectively concluding that Ginevan's convictions removed him from "the people" referenced in the Second Amendment. Alternatively, the trial court found "that as applied to a violent felon this nation's historical traditions regarding firearms regulations support prohibiting violent felons from possessing firearms[,]" and therefore, even if Ginevan's prior convictions did not wholly disqualify him from the protections of the Second Amendment, Code § 18.2-308.2's prohibition on his possession of firearms did not violate the Second Amendment. After the trial court's ruling on the matter, Ginevan entered a conditional guilty plea, preserving his right to appeal the Second Amendment question.[3]

Ginevan appealed to the Court of Appeals, and a three-judge panel affirmed the judgment of the trial court. *See Ginevan v. Commonwealth*, 83 Va. App. 1 (2024). Unlike the trial court, the Court of Appeals assumed (but did not decide) that Ginevan, despite his felony convictions, still fell within "'the people'" described in the Second Amendment. *Id.* at 19-20.

Turning to the application of Code § 18.2-308.2 to Ginevan, the Court of Appeals addressed whether Ginevan was a violent felon because he had been convicted of possessing ammunition after previously having been convicted of a felony. Despite there being no evidence of actual violence related to Ginevan's previous conviction for possessing ammunition as a felon,

[3] Ginevan had been indicted for possessing a firearm after "ha[ving] previously been convicted of a violent felony[.]" As a result of his conditional guilty plea, the charge was amended with Ginevan pleading guilty to possession of a firearm by a felon within ten years of his prior felony conviction. Thus, the amended charge no longer alleged that Ginevan's relevant prior conviction was for a crime of violence.

the Court of Appeals concluded that the General Assembly's classification of that crime as a violent crime was dispositive of Ginevan's status as a violent person. *Id.* at 19.

Having accepted the characterization of Ginevan as violent, the Court of Appeals, conducting a historical review of firearms regulations as required by the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), observed that "[a] review of English history, the American period prior to the Founding, and our post-civil war era demonstrates persuasively that restrictions on gun possession were broadly permitted against those who were judged to pose a danger to the public." *Ginevan*, 83 Va. App. at 27.

Finding that a prior conviction for a crime that the General Assembly has classified as violent renders one dangerous for the purposes of the Second Amendment, the Court of Appeals concluded that Code § 18.2-308.2 did not violate the Second Amendment as applied to Ginevan. *Id.* at 27-28. We granted Ginevan's petition for appeal and now review that judgment.

II. ANALYSIS

A. Standard of review

Ginevan's constitutional challenge to the application of Code § 18.2-308.2 to him raises "questions of law that we review de novo." *Montgomery County v. Virginia Dep't of Rail & Pub. Transp.*, 282 Va. 422, 435 (2011); *see also Anderson v. Clarke*, 302 Va. 400, 408 (2023). We begin that review presuming that all enactments of the General Assembly, including Code § 18.2-308.2, are constitutional. *FFW Enters. v. Fairfax County*, 280 Va. 583, 590 (2010). This is so because "[t]he General Assembly may enact any law or take any action 'unless it is prohibited by the state or federal constitution in express terms or by necessary implication.'" *Id.* (quoting *Dean v. Paolicelli*, 194 Va. 219, 227 (1952)).

The presumption and our resulting deference are not absolute. The purpose of the Bill of Rights was to remove certain issues from legislative determination. In other words, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). Thus, although "judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate," it is not appropriate if a legislative enactment conflicts with a provision of the Constitution. *Bruen*, 597 U.S. at 26. When such a conflict arises, it is the Constitution and not the legislative enactment "that demands our unqualified deference." *Id.*

Against this backdrop, we turn to Code § 18.2-308.2 and Ginevan's argument that, as applied to him, it violates the Second Amendment.

B. Scope of Code § 18.2-308.2

Code § 18.2-308.2 is sweeping in its scope. As pertinent here, it makes it unlawful for a person who previously has been convicted of *any* felony "to knowingly and intentionally possess or transport *any* firearm or ammunition for a firearm[.]" Code § 18.2-308.2(A) (emphasis added). Under its terms, a convicted felon may not possess a firearm of any kind or even a single bullet without being subject to criminal penalties. It matters not whether the person is in his home or in public, whether the firearm is loaded, what type of firearm it is, or, in the case of ammunition, whether the person also possesses a firearm that is capable of firing the single bullet. The statute does not require any inquiry as to whether the person is now or has ever been a danger to others. Absent a few specified exceptions not relevant here,[4] Code § 18.2-308.2 is a

[4] Code § 18.2-308.2(B) provides that Code § 18.2-308.2(A)'s prohibition

> shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material, or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any

lifetime ban of a person convicted of any felony, regardless of the circumstances or class of felony, from ever possessing a firearm or ammunition.

C. An individual right applicable against the States

The Second Amendment to the Constitution of the United States provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In *Heller*, 554 U.S. at 592, the Supreme Court noted "that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Properly understood, that right belonged not to the Militia, but to individuals—that is, the Second Amendment recognized the right of individual citizens, regardless of militia service or affiliation, "to keep and bear arms." *Id.* at 595. Two years after *Heller*, the Supreme Court held that the Second Amendment not only restricted the exercise of power by the federal government

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> other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, § 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess, or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

Code § 18.2-308.2(C) provides a restoration process for convicted felons whose "civil rights have been restored by the Governor or other appropriate authority." Code § 18.2-308.2(C2) allows some convicted felons to possess "(i) antique firearms or (ii) black powder in a quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms."

but by state governments as well, holding that "the Second Amendment right is fully applicable to the States." *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). Taken together, *Heller* and *McDonald* conclusively establish that the Second Amendment protects an individual right and that it is applicable against federal, state, and local governments.

D. Limitations on the right

Having acknowledged the right and its applicability, the Supreme Court also made clear in *Heller* that the right protected by the Second Amendment is not absolute. The Second Amendment does not authorize any person to possess any weapon for any purpose at any time. In recognizing that some limitations of the right may be permissible, the Court in *Heller* analogized to First Amendment rights, noting that the Second Amendment right is

> not unlimited, just as the First Amendment's right of free speech [i]s not, see, *e.g.*, *United States v. Williams*, 553 U.S. 285 (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose.*

554 U.S. at 595. Having recognized that the Constitution permits some limitations on the right, the Supreme Court in *Heller* did not attempt to identify all such potentially permissible limitations because the facts and circumstances of the case before it did not provide a good opportunity for exploring what those limitations might be.

The District of Columbia law at issue "totally ban[ned] handgun possession in the home. It also require[d] that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable." *Id.* at 628. Finding the wholesale ban wholly incompatible with the Second Amendment, the Supreme Court struck it down without even identifying the level of scrutiny courts should apply in reviewing attempted legislative limitations on the Second Amendment right because "[u]nder any of the standards of scrutiny that we have applied to

enumerated constitutional rights," the District of Columbia law "would fail constitutional muster." *Id.* at 628-29.

Given that the law in question was unconstitutional under any pertinent standard, the *Heller* majority knowingly left unresolved many issues related to the Second Amendment right and the extent that governments could place limitations on the right. It expressly declined to "undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment[.]" *Id.* at 626. In doing so, it explained that because *Heller*

> represent[ed] this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field, any more than *Reynolds v. United States*, 98 U.S. 145 (1879), our first in-depth Free Exercise Clause case, left that area in a state of utter certainty. And there will be time enough to expound upon the historical justifications for . . . exceptions . . . if and when those exceptions come before us.

*Id.*at 635.

In the years since *Heller*, the Supreme Court unsurprisingly has continued to focus on the issues specifically raised in the cases before it as opposed to attempting to definitively opine on the Second Amendment right in the abstract. For example, in its recent decision in *United States v. Hemani*, 608 U.S. 772, 794 (2026), the majority expressly limited its holding to the one subsection of the federal statute before it and the facts of the case, explaining that

> [w]e do not address efforts to ban addicts . . . or those presently intoxicated, from possessing a firearm. We do not address other prophylactic laws Congress might adopt after determining that users of a particular drug pose a special risk of misusing firearms. . . . *We do not address 18 U. S. C. §922(g)(1)'s provision disarming individuals convicted of felonies* (often including drug-related ones). . . . We do not even address whether the government could bring a prosecution under §922(g)(3) accompanied by individualized proof that the defendant's use of marijuana (or any other drug) renders him a danger to himself or others. Or proof that a certain drug always renders its users dangerous because of

> its potency or for some other reason. *None of those issues is before us and we do not pass on them either way.*

(Emphases added.)

E. *Heller*'s dicta and *Bruen*'s framework

1. *Heller*'s dicta

As the above-quoted language from *Hemani* makes clear, the Supreme Court has yet to hear a case that required it to definitively decide the issue before us—whether, consistent with the Second Amendment, the government may prohibit a convicted felon from ever possessing a firearm. Accordingly, there is no definitive statement from the Justices on how that question should be resolved. The lack of a definitive statement, however, does not mean that the Justices have been silent on the issue.

Beginning with its decision in *Heller*, the Supreme Court has often included statements in its Second Amendment cases suggesting that bans on previously convicted felons possessing firearms were acceptable or, at the very least, that nothing in its decisions should be read as addressing felon-in-possession bans. For example, in *Heller*, the majority stated that

> nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

554 U.S. at 626-27. In subsequent cases, the Supreme Court has either quoted the language from *Heller* or otherwise indicated that its rulings did not necessarily preclude bans on felons possessing firearms. *See, e.g.*, *Wolford v. Lopez*, 146 S. Ct. 2032, 2042 (2026); *Hemani*, 608 U.S. at 791 n.6; *McDonald*, 561 U.S. at 786.

Critically, however, these statements about dispossessing felons all were made in cases where the question of whether the Second Amendment allowed legislatures to forever bar felons from possessing firearms was not an issue. For example, *Heller* involved a "total[] ban[on] handgun possession in the home," 554 U.S. at 628, regardless of whether a person had a felony conviction or not, and Mr. Heller certainly was no felon. To the contrary, he was a "special police officer authorized to carry a handgun while on duty at the Thurgood Marshall Judiciary Building[,]" but was required to turn in the handgun at the end of his shift and was not permitted to have a handgun for protection in his home. *Id.* at 575. Similarly, the restrictions at issue in *Wolford* and *McDonald* were not limited to those who previously had been convicted of a felony or otherwise had been found to be violent. *See Wolford*, 146 S. Ct. at 2040 (recognizing that, "[o]n a large portion of the land within the State's boundaries, possession of a firearm is now flatly prohibited" by the law in question); *McDonald*, 561 U.S. at 750 (recognizing that the Chicago ordinance at issue "prohibit[ed] registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City").

As such, the statements about felon-in-possession bans contained in these cases are properly understood as dicta and not holdings of the Supreme Court. *See Deiter v. Commonwealth*, 205 Va. 771, 775 (1965) (defining dicta as a statement in a judicial opinion that is "not responsive to the question presented and was not necessary to a disposition of the case"). Statements of dicta, while potentially persuasive, do not provide a binding rule of decision in future cases. As both this Court and the United States Supreme Court have long explained:

> It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. *If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision*. The reason of this maxim is obvious. The question actually before the Court is

> investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Vasquez v. Commonwealth, 291 Va. 232, 242 (2016) (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399-400 (1821) (emphasis added)).

Any doubt that the Supreme Court's statements about felon-in-possession bans represent non-binding dicta and do not definitively resolve the question of the constitutionality of felon-in-possession bans was removed by that Court's recent decision in *Hemani*. As noted above, the *Hemani* majority made clear that its decision did not address 18 U.S.C. §922(g)(1)'s felon-in-possession ban because that "*is [not] before us and we do not pass on [it] either way.*" *Hemani*, 608 U.S. at 794 (emphasis added). If the Supreme Court's statements in other cases about felon-in-possession bans were holdings that definitively answered the constitutional question, this statement from *Hemani* would not only have been unnecessary, it would make no sense.

Although the fact that these statements are dicta means that they do not provide a binding rule of decision in a case such as this one, it does not mean the statements are of no moment or should be ignored. As noted above, such statements from a higher court can be viewed as persuasive authority. This is especially so when, as here, the dictum originates in what the Supreme Court itself identified as its "first in-depth examination of the Second Amendment[.]" *Heller*, 554 U.S. at 635.

Many lower courts, including Virginia's appellate courts, have found the dicta from *Heller* and subsequent cases persuasive and cited it as an accurate statement of the law. *See, e.g.*, *Digiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134-35 (2011); *Prekker v. Commonwealth*, 66 Va. App. 103, 117 n.8 (2016), *overruled in part on other grounds by Jennings v. Commonwealth*, 82 Va. App. 692 (2024) (en banc). Such reliance upon and

adherence to a higher court's dicta remains a viable option for lower courts unless and until the dicta collides with later statements of the higher court that were necessary to decide a more recent case. When tension develops between a statement of dicta and the subsequent holding or *ratio decidendi* of the higher court in a later case, reliance on the earlier dicta is inappropriate.

2. *Bruen*'s framework

Such tension developed when the United States Supreme Court issued its decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, the Supreme Court considered New York's licensing regime for citizens who sought to carry firearms in public. *Id.* at 11. The New York scheme allowed issuance of such licenses "only when an applicant demonstrates a special need for self-defense[.]" *Id.* Finding that such a requirement impermissibly burdened an applicant's Second Amendment right, the Supreme Court "conclude[d] that the State's licensing regime violates the Constitution." *Id.*

In reaching this conclusion, the Supreme Court set forth an analytical framework that courts must apply in evaluating Second Amendment challenges to limitations on a person's right to keep and bear arms. In explaining the framework, the Supreme Court wrote that

> we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

The Supreme Court has explained that applying this analytical framework "involves two steps." *Wolford*, 146 S. Ct. at 2043. In the first step, a reviewing "court must determine whether

the law before it clashes with the 'plain text' of the [Second] Amendment's language." *Id.* (quoting *Bruen*, 597 U.S. at 24). To answer that question requires a reviewing court to consider

> three subsidiary questions. First, does the law apply to "the people"—which is to say, to "all members of the political community"? Second, does it concern any form of "Arms," *i.e.*, any weapon customarily used for offensive or defensive purposes? Third, does the law place any restrictions on either the "keep[ing]" (*i.e.,* possession) or the "bear[ing]" (*i.e.*, carrying) of arms?

Id. at 2043-44 (alterations in original) (citations omitted). "If a challenged law falls within the plain text of the Second Amendment, it is presumptively unconstitutional[.]" *Id.* at 2044 (citing *Bruen*, 597 U.S. at 24).

Once a reviewing court determines that a law or regulation is inconsistent with the plain text of the Second Amendment, it turns to *Bruen*'s second step—allowing the government an opportunity to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. Thus, *Bruen*'s second step recognizes that "the relevant government—federal, state, or local—may be able to show that its challenged law did not infringe the historical understanding of the codified right." *Wolford*, 146 S. Ct. at 2044 (citing *Bruen*, 597 U.S. at 24).

In the cases it has decided since setting forth the *Bruen* framework, the United States Supreme Court has consistently and faithfully utilized that framework in resolving Second Amendment challenges. *See, e.g.*, *Wolford*, 146 S. Ct. at 2043-44, 2047-53; *Hemani*, 608 U.S. at 780-83; *United States v. Rahimi*, 602 U.S. 680, 691-92 (2024). Coupled with its statement in *Hemani* that it was not addressing the federal felon-in-possession ban because it was not before it, *see* 608 U.S. at 794, the Supreme Court's consistent application of the *Bruen* framework leads inexorably to the conclusion that the *Bruen* framework and not the felon-in-possession dicta

from *Heller* and subsequent cases provides the rule of decision for us in this case.[5] Accordingly, we now apply the *Bruen* framework to Code § 18.2-308.2.

F. Application of the *Bruen* framework

Our conclusion that the *Bruen* framework and not the *Heller* dicta provides the rule of decision does not answer the question of whether or not, as applied to Ginevan, Code § 18.2-308.2 violates the Second Amendment. Rather, it requires that we apply the framework to Ginevan's conviction and circumstances as revealed by the record in this case.[6] We do so now.

1. *Bruen*'s first step

As noted above, the first part of the *Bruen* framework requires that we determine whether Code § 18.2-308.2's prohibition conflicts with the text of the Second Amendment. 597 U.S. at 24. To answer this question, the Supreme Court counsels asking three "subsidiary questions": (1) "[D]oes the law apply to 'the people?'"; (2) Does the law apply to Second Amendment "[a]rms, i.e., any weapon customarily used for offensive or defensive purposes?"; and (3) Does

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[5] We recognize that some courts would characterize the *Bruen* framework as being part of the opinion's holding, while others would conclude that a court's holding is properly understood as only the result and not the reasoning. *See* 18 *Moore's Federal Practice - Civil* § 134.03 (3d ed. 2026) (recognizing that "[s]ome courts hold that the reasoning of binding decisions is also binding[,]" but others do not). Regardless of whether the *Bruen* framework is classified as a holding or not, it clearly was necessary to the decision in *Bruen* and the subsequent cases, and therefore, we view it as binding on us. *Cf. Collins v. Commonwealth*, 297 Va. 207, 217 n.5 (2019) (recognizing that "the *ratio decidendi* of a case as a near-synonym for the case's holding even though the concrete holding is typically [but] one species or instance of the *ratio decidendi*" (internal quotation marks and citation omitted)); *Commonwealth v. Holland*, 304 Va. 34, 48 n.6 (2025) (recognizing that a decision's essential rationale "was not dicta" that did not control a subsequent decision).

[6] In its recent decision in *Hemani*, the Supreme Court repeated the *Heller* dicta. *Hemani*, 608 U.S. at 791, n.6. We read the inclusion of the language as making clear that the felon-in-possession question, in all of its possible permutations, has not been definitively resolved and that reviewing courts must apply the *Bruen* framework in attempting to arrive at an answer, whatever answer that might be.

the law restrict a person's ability to keep or bear an arm that is protected by the Second Amendment? *Wolford*, 146 S. Ct. at 2043.

In this case, there has not and cannot be any dispute that the second and third questions must be answered in the affirmative. The weapon Ginevan is charged for possessing is an ordinary shotgun, which clearly falls within the scope of a weapon in common use for lawful purposes. Accordingly, it unquestionably is an arm for the purposes of the Second Amendment. Similarly, because Code § 18.2-308.2 is a blanket ban on Ginevan even possessing such a shotgun, there can be no question that it restricts his ability to keep and bear arms.[7] Thus, the only inquiry from *Bruen*'s first step that could even be in dispute is whether Ginevan's prior felony convictions removed him from "the people" protected by the Second Amendment.[8]

Starting with *Heller* and continuing in more recent cases, the United States Supreme Court has indicated that "the people" protected by the Second Amendment includes "all members of the political community[.]" *Id.* at 2043 (quoting *Heller*, 554 U.S. at 580). To determine whether a felony conviction, without more, removes a person from the political community, our focus is on the Constitution's text.

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[7] Although there is evidence in this case that Ginevan may have pointed his shotgun at someone, he was neither charged with nor convicted for any use of the shotgun. He was charged only with mere possession, so our review is focused on whether the Commonwealth may ban his possession of a firearm.

[8] In both the trial court and the Court of Appeals, the Commonwealth argued that, having been convicted of a felony, Ginevan no longer was included in "the people" referenced in the Second Amendment. The trial court agreed with the Commonwealth, but the Court of Appeals declined to answer the question, preferring to rest its decision on its analysis of *Bruen*'s second step. *Ginevan*, 83 Va. App. at 19-20. At oral argument in this Court, the Commonwealth argued that we should not reach the question of whether a felon is forever disqualified from being part of "the people" for constitutional purposes and instead find that Code § 18.2-308.2 survived *Bruen*'s second step. When directly asked, the Commonwealth stated that, although it did not concede that Ginevan remained among "the people," it was not contesting that he did. Given that answering the question is necessary to our resolution of this appeal, we address it now.

As noted above, the Second Amendment explicitly provides that the right at issue is "the right of the people[.]" The Supreme Court, comparing and contrasting that phrase to other constitutional provisions that use the term "person" or "accused," has concluded that "the right of the people" is "a term of art employed in select parts of the Constitution." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). The Supreme Court has recognized that the exact phrase, "the right of the people," is used three times in the Bill of Rights, appearing in the First, Second, and Fourth amendments. *See Heller*, 554 U.S. at 579; *Verdugo-Urquidez*, 494 U.S. at 265.

Having concluded that the phrase is a term of art, it is unsurprising that the United States Supreme Court also concluded that the phrase means the same thing each time it is used in the Bill of Rights, acknowledging that although

> this textual exegesis is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.

Verdugo-Urquidez, 494 U.S. at 265; *see also Heller*, 554 U.S. at 579 (concluding that the three uses of the phrase in the Bill of Rights stand for the proposition that the right referenced belongs to the individual).[9]

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[9] That the Supreme Court concluded that the phrase means the same thing when used in the Second Amendment as it does when used in the First and Fourth Amendments is hardly surprising. After all, it is the same phrase. In all three instances, it was drafted and adopted by the same Congress. Each instance was then forwarded by that Congress to the States for ratification and each state ratified the identical phrase in each instance. Ultimately, the three amendments using the identical phrase all became part of the Constitution on the same day.

It is a well-recognized interpretative presumption that when the same drafters use the same phrase at the same time in various provisions of a proposed enactment, the same meaning of the phrase obtains. *Cf. Eberhardt v. Fairfax Cnty. Emps.' Ret. Sys. Bd. of Trs.*, 283 Va. 190, 195 (2012). Similarly, when those who ratify constitutional language ratify the same language at

The fact that the phrase "right of the people" means the same thing in the First, Fourth, and Second Amendments is, by our reckoning, sufficient to resolve whether a felony conviction, without more, removes a person from the political community. It almost goes without saying that no one would contend that, once convicted of a felony, a non-incarcerated person would fall outside the protections of the First Amendment, and therefore no longer enjoy "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. Similarly, no one maintains that a felony conviction forever forfeits "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. Because a felony conviction does not remove a person from "the people" referenced in the First and Fourth Amendments, we conclude that, as a matter of language and logic, it does not remove a person from "the people" referenced in the Second Amendment.[10]

Of course, our conclusion that Ginevan is not excluded from "the people" referenced in the Second Amendment represents the beginning and not the end of the analysis. As then-Judge Barrett observed, the conclusion that felons do not fall outside the Second Amendment "does not

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the same time, a similar presumption applies. Although there may be circumstances in which such a presumption is overcome, no such circumstance is apparent here. *See, e.g.*, *Scott v. McDougle*, 305 Va. ___, ___, 930 S.E.2d 332, 344 (2026).

[10] In the time since the Supreme Court decided *Bruen* and adopted its two-step analytical framework, we are aware of no federal circuit court of appeals that has concluded that a felony conviction removes a person from "the people" referenced in the Second Amendment. Although there is a circuit split on whether or not felon-in-possession bans survive step two of the *Bruen* analysis, it appears that every federal circuit court of appeals to expressly answer the question has concluded that a felony conviction does not remove a person from "the people" under step one of *Bruen*. *See, e.g.*, *Zherka v. Bondi*, 140 F.4th 68, 75-77 (2d Cir. 2025); *Range v. AG United States*, 124 F.4th 218, 226-28 (3d Cir. 2024) (en banc); *United States v. Kimble*, 142 F.4th 308, 311 (5th Cir. 2025); *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024); *United States v. Watson*, 171 F.4th 1012, 1017-18 (7th Cir. 2026); *United States v. Duarte*, 137 F.4th 743, 752-55 (9th Cir. 2025) (en banc); *Rocky Mt. Gun Owners v. Polis*, 121 F.4th 96, 114-16 (10th Cir. 2024).

mean that the government cannot prevent them from possessing guns. Instead, it means that the question is whether the government has the power to disable the exercise of a right that they otherwise possess, rather than whether they possess the right at all." *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting).[11] Accordingly, we now turn to *Bruen*'s second step and whether the Commonwealth had the power to disable Ginevan's exercise of his rights under the Second Amendment.

2. *Bruen*'s second step

We begin our review of step two of the *Bruen* framework by recognizing that our analysis of step two necessarily is colored by our conclusion regarding step one. Because we have concluded that, as applied to Ginevan, Code § 18.2-308.2 falls within the plain text of the Second Amendment, we must abandon our initial presumption that Code § 18.2-308.2 is constitutional, *FFW Enters. v. Fairfax County*, 280 Va. 583, 590 (2010), and begin our analysis of *Bruen*'s second step presuming its application here is "unconstitutional[.]" *Wolford*, 146 S. Ct. at 2044 (citing *Bruen*, 597 U.S. at 24). This new presumption may be overcome only if the Commonwealth can "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. Importantly, it is the Commonwealth

[11] Although it was a dissent when written, then-Judge Barrett's opinion in *Kanter* has proved prescient in some regards. It correctly anticipated the Supreme Court's ultimate adoption of what is now referred to as *Bruen*'s two-step analytical framework. *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting). As a result, post-*Bruen*, even the Seventh Circuit has now adopted then-Judge Barrett's position on the issue of whether felons remain part of "the people" referenced in the Second Amendment. *See Watson*, 171 F.4th at 1017-18. Then-Judge Barrett's dissent in *Kanter* has been cited as persuasive authority by many courts, including by majority, concurring, and dissenting opinions in the United States Supreme Court. *See, e.g.*, *Hemani*, 608 U.S. at 793-94; *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring); *Wolford*, 146 S. Ct. at 2077 n.16 (Jackson, J., dissenting). To the extent that its logic and reasoning survive the decisions of the Supreme Court that came later, we also consider it to be persuasive authority that informs but does not control our resolution of the issues before us.

that bears the burden of establishing that Code § 18.2-308.2 satisfies the historical test in this case. *See id.*; *Hemani*, 608 U.S. at 781; *Rahimi*, 602 U.S. at 691.

In attempting to meet this burden, a government, including the Commonwealth here, "may 'reaso[n] by analogy,' showing that its contemporary regulation is 'relevantly similar' to ones 'well-established' in the Nation's history." *Hemani*, 608 U.S. at 773 (alteration in original) (quoting *Bruen*, 597 U.S. at 28-30). To carry the government's burden, the proffered historical analogue "need not be a 'dead ringer' or a 'historical twin'" for the modern restriction at issue. *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30). The government need only show that its "analogue or collection of analogues is 'relevantly similar' to the modern law" being defended. *Wolford*, 146 S. Ct. at 2044 (quoting *Bruen*, 597 U.S. at 29). As the Supreme Court has further explained:

> Determining whether this condition is met requires consideration of "how" the analogue restricted the keeping or bearing of arms—that is, whether it imposed a restriction similar to that imposed by the challenged law. And a court must also consider "why" the analogue restricted the keeping or bearing of arms—that is, whether its rationale was similar to that of the new law.

Id. (citations omitted).

Finally, to be of value, a historical analogue must be of such vintage that it demonstrates "the public understanding of the right to keep and bear arms" when the right was constitutionally recognized. *Bruen,* 597 U.S. at 38. Although there is a scholarly debate as to whether, for state impositions on the right, the understanding surrounding the adoption of the Second Amendment in 1791 or the understanding at the time of the adoption of the Fourteenth Amendment in 1868 is the relevant understanding, *id.* at 37-38, *Bruen* makes clear that statutory restrictions that originate in the 20th century do not reveal that understanding. After all, the statute found

unconstitutional in *Bruen* had existed in one form or another since 1911, *id.* at 11, and its more than one-hundred-year existence was insufficient to save it from constitutional challenge.

With these principles guiding our analysis, we now turn to the Commonwealth's arguments that sufficient historical analogues demonstrate that, as applied to Ginevan, Code § 18.2-308.2 falls within the nation's historical tradition of firearms regulation.

G. Historical regulation of firearms and the Commonwealth's proposed analogues

1. Lack of an historical twin

Although governments are not required to prove the existence of an historical twin from the relevant historical period to justify a modern regulation, the existence or absence of one certainly is something to consider. After all, the existence of an historical twin would strongly suggest that the modern regulation is not an impermissible infringement on the Second Amendment right as understood by the drafters and ratifiers of the amendment. Here, we note the complete lack of a relevant historical twin for a statute that permanently disarms non-incarcerated persons who previously had been convicted of a felony.

Statutes banning convicted felons from possessing firearms as a result of their prior felony convictions are a creature of twentieth century legislatures. *See* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*?, 32 Harv. J.L. & Pub. Pol'y 695, 698 (2009) (first felon-in-possession statutory ban for all felony convictions adopted in the 1960s); Nelson Lund, *Two Faces of Judicial Restraint (or Are There More?) in* McDonald v. City of Chicago, 63 U. Fla. L. Rev. 487, 502-03 (2011) (same). When asked at oral argument, the Commonwealth could not

identify a single American statute that banned all convicted felons from possessing firearms that predated the federal effort in the 1960s.[12]

There were efforts prior to the 1960s in some American jurisdictions to ban those convicted of specific *violent* felonies from possessing at least certain firearms after their release from incarceration. Such efforts are best encapsulated by the efforts of the National Conference of Commissioners on Uniform State Laws, which drafted proposed uniform acts "in 1926 and again in 1930." Marshall, 32 Harv. J.L. & Pub. Pol'y at 700. The draft 1926 act, which drew on a few state enactments that were enacted after 1923, prohibited a person who had been convicted of "murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking[,]" from possessing "'a pistol or revolver' defined as 'any firearm with barrel less than twelve inches in length.'"[13] *Id.* at 701 (first alteration in original) (quoting Unif. Act to Regulate the Sale & Possession of Firearms (A.B.A. Standing Comm. on Unif. State L., Second Tentative Draft 1926) *in* Report of the Forty-Ninth Annual Meeting of the American Bar Association 527, 559 (1926)). Thus, although we

> recogniz[e] the hazard of trying to prove a negative, one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I. That is true even of disabilities limited . . . to convictions for crimes ordinarily committed with the aid of a firearm and to concealable weapons.

Id. at 708.

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[12] Although we have conducted a review of at least some historical sources, we note that "we are not obliged to sift the historical materials for evidence to sustain [the Commonwealth]'s statute. That is [the Commonwealth's] burden." *Bruen*, 597 U.S. at 60. Thus, the Commonwealth's acknowledgement regarding the absence of pre-20th century regulations banning a previously convicted felon from possessing a firearm or ammunition is sufficient to establish that as true for the purpose of this appeal.

[13] Given that such statutes, as represented by the proposed uniform act, limited the restriction to those who had been convicted of specified violent felonies from possessing specified firearms, this early twentieth century effort is a far cry from Code 18.2-308.2's ban on possessing *any* firearm or ammunition if convicted of *any* felony.

Once again, the Commonwealth acknowledged this history at oral argument and does not point to any American statute that, based solely on a prior felony conviction, expressly banned even violent felons from possessing firearms before the 1920s. The Court of Appeals also concluded that statutes that expressly banned felons from possessing firearms were a twentieth century phenomena. *Ginevan*, 83 Va. App. at 26.

Although not dispositive, the inability of the Commonwealth to offer even one example from the relevant timeframe of a statute barring all felons or even violent felons from possessing even a class of firearms, let alone all firearms and ammunition, is a significant strike against the constitutionality of Code § 18.2-308.2. After all, the drafters and ratifiers of both the Second and Fourteenth Amendments certainly were familiar with people who had been convicted of felonies but had served their sentences, yet neither group enacted felon-in-possession bans like Code § 18.2-308.2. As the Supreme Court observed in *Bruen*,

> when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.

597 U.S. at 26-27. *See also Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (noting that "[t]he best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban," and that "at least thus far, scholars have not been able to identify any such laws").

Given the lack of anything approaching an historical twin from the relevant time period, the Commonwealth proffers certain historical analogues which it believes are sufficiently similar to bring Code § 18.2-308.2 within the historical understanding of the Second Amendment right.

These rationales can broadly be divided into three categories: felon punishment at the time of the Founding, provisions regarding enemies of the State, and laws dispossessing dangerous individuals from possessing firearms. We address each in turn.

2. Felon punishment at the time of the Founding

The Commonwealth argues that a total ban on felons possessing firearms is permissible because, at the time of the Founding, felonies routinely warranted "punishments far harsher than disarmament, including execution, estate forfeiture, or life imprisonment. And if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible."[14] (Internal quotation marks and citation omitted.) The argument, colloquially referred to as the "greater includes the lesser," is essentially that, if we conclude that disarmament is a lesser punishment than could have been imposed at the Founding, it does not matter that no Founding-era legislature imposed it; disarmament and any other punishment less than death is constitutionally permissible.

Multiple courts, including the Virginia Court of Appeals, have adopted the greater includes the lesser rationale. *See Orange v. Commonwealth*, 88 Va. App. 376, 381 (2026) ("We agree with the Commonwealth, however, that the Second Amendment permits disarming convicted forgers because forgery was punishable by death . . . when the Second Amendment was ratified."); *see also United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025) (en banc). Although this approach provides a

[14] There can be no serious argument that denying the right to keep and bear arms to those who receive a sentence of death or are presently incarcerated violates the Second Amendment. Dead men cannot keep and bear arms, and the state may deny firearms to those in prison. However, "[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

reasonably clear rule of decision and has some facial appeal, we, for the reasons detailed below, do not believe it withstands scrutiny. Accordingly, even setting aside the inherent difficulties in determining what crimes constitute relevant felonies,[15] we reject it here.

a. Attainder and civil death

The argument has its genesis in the English common law and how felons were punished. In England prior to the Founding, felonies often were punished by death and estate forfeiture. Before the sentence of death was actually carried out or in the instances in which a sentence of less than death was imposed, the convicted person was subject to attainder. Attainder was the common law process "of extinguishing a person's civil rights when that person is sentenced to death or declared an outlaw for committing a felony or treason." Black's Law Dictionary (12th ed. 2024), "attainder," p. 156. It inflicted what has been called civil death or *civiliter mortuus*, rendering the person as devoid of rights as if he were actually dead. *See id.*, "*civiliter mortuus*," p. 310 ("A person civilly dead, deprived of civil rights").

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[15] This is not simply a modern problem of "felony creep" changing our conceptions of what constitutes a true felony, but it also was a problem at the time of the Founding. No less an authority than James Madison recognized that there was no universally agreed upon definition of the term felony during the ratification debates, writing in Federalist 42 that

> [f]elony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its own by legislative adoption. The meaning of the term, as defined in the codes of the several States, would be as impracticable as the former would be a dishonourable and illegitimate guide. *It is not precisely the same in any two of the States; and varies in each with every revision of its criminal laws.*

The Federalist, No. 42, p. 281 (Jacob E. Cooke, ed. 1961) (emphasis added).

Civil death as a result of attainder resulted in multiple punishments. One such punishment was "corruption of blood" meaning "that the one attainted could no longer devise his holdings to his heirs nor receive property by devise or descent from his ancestors[,]" resulting in such property escheating "to the sovereign[.]" Harry David Saunders, *Civil Death—A New Look at an Ancient Doctrine*, 11 Wm. & Mary L. Rev. 988, 989 (1970). A second punishment was "forfeiture[,]" meaning "that all land of the convicted felon was forfeited to the sovereign upon sentence." *Id.* A final consequence of civil death by attainder was "the loss of the convict's civil rights[,]" which "disqualified [the convict] from being a witness, . . . bringing an action or performing any legal function, and" left him "regarded as dead by the law." *Id.*

Although the recognized process in England, not all aspects of the process were adopted in the colonies or in the nascent American republic. In his treatise on Blackstone's Commentaries, St. George Tucker noted that "[c]onfiscations, forfeitures, and corruption of blood, do not follow in case of conviction or attainder for any treason or felony either in the commonwealth of Virginia, or under the federal government." 4 Willam Blackstone & St. George Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia*, p. 377 n.8 (1803). Accordingly, in general, "[c]ivil death and the other incidents of attainder were never a part of the common law recognized in the United States[.]" Saunders, 11 Wm. & Mary L. Rev. at 990. According to at least one commentator, to the extent that attainder and accompanying civil death occurred in America, the process appears in general to have been a creature of statute. *Id.*

By the late 1800s, multiple courts, including this one, explicitly recognized that, to the extent that civil death existed in America, it was temporary and ended when the convict had

completed any period of incarceration. *See, e.g.*, *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871) (holding that civil death was not a permanent condition after conviction, but rather lasted only "[f]or the time being, during his term of service in the penitentiary"); *In re Estate of Nerac*, 35 Cal. 392, 396 (1868) (recognizing that civil rights are not permanently lost upon a felony conviction, but rather, are suspended during the period of incarceration); *Bowels v. Habermann*, 95 N.Y. 246, 247 (1884) (same). Thus, the rights of a person convicted of a felony and sentenced to a term of years at the time of the Founding were "merely *suspended* during the term of the sentence[,]" and therefore,

> the argument that the severity of punishment at the founding implicitly sanctions the blanket stripping of rights from all felons, including those serving a term of years, is misguided. Those who ratified the Second Amendment would not have assumed that a free man, previously convicted, lived in a society without any rights and without the protection of law.

Kanter, 919 F.3d at 461 (Barrett, J., dissenting); *see also Range v. Attorney Gen. U.S.*, 124 F.4th 218, 231 (3d Cir. 2024) (en banc).

Not only do we find that the historical practice does not support the Commonwealth's argument regarding Second Amendment rights, but we reject the logical endpoint of the Commonwealth's argument. If the greater potential punishment of death allowed for all lesser punishments, including the stripping of Second Amendment rights, it also allowed for the stripping of all other constitutional rights. After all, the Supreme Court has made clear that the Second Amendment right is not a lesser right and is of equal dignity as the other rights elucidated in the Bill of Rights. *See, e.g.*, *Bruen*, 597 U.S. at 70 (holding that the Second Amendment right "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees'" (quoting *McDonald*, 561 U.S. at 780)).

Just as a dead man cannot keep and bear arms, he cannot freely exercise religion or speech (First Amendment), be secure in his papers, homes, and effects (Fourth Amendment), remain silent upon criminal questioning (Fifth Amendment), demand a speedy trial or have the assistance of counsel in a criminal case (Sixth Amendment), and so on. The Commonwealth has offered no example of a legislature at the time of the Founding, the ratification of the 14th Amendment, or anytime thereafter asserting that a felony conviction stripped a person of all constitutional protections or that a previously convicted felon only enjoyed those protections as a matter of grace that could be rescinded by the legislature as opposed to as a matter of constitutional law that could not. Because the Commonwealth has identified no such attempt for other protections provided by the Bill of Rights and because the Second Amendment right is a coequal right to those, we simply cannot accept, as a matter of logic, the Commonwealth's greater includes the lesser argument.[16]

b. Estate forfeiture

The Commonwealth next relies on the common law punishment of estate forfeiture as a historical analogue. The Commonwealth asserts that, in many of the colonies and then in some of the states of early America, complete forfeiture of one's estate, often but not always coupled with a sentence of death or life-imprisonment, was a common punishment imposed for

[16] The Commonwealth urges that we should not be concerned with the loss of other constitutional rights because, by and large, limitations on those rights now are subject to the means-ends scrutiny *Bruen* rejected and only the Second Amendment is subject to *Bruen*'s historical test. This misunderstands the inquiry. Historically, long before courts coined terms such as means-ends scrutiny, the states were not viewed as having the power to strip a convicted felon who had served his sentence of all constitutional rights, which is the logic of the Commonwealth's position. That the Commonwealth has not provided a single example of such a stripping of rights from the relevant time period, whether the Second Amendment right or other rights referenced in the Bill of Rights, means that its argument fails under *Bruen*.

conviction for many types of felonies.[17] The Commonwealth then asserts that most of those laws did not allow those who had not been executed or confined to prison for the remainder of their lives to recover the forfeited property upon the completion of their sentences. Accepting all of this as historically accurate is insufficient to support the Commonwealth's conclusion—that estate forfeiture as a felony sentence at the time of the Founding justifies permanent disarmament of felons now.

That is because the Commonwealth's presentation fails to explain the status of such a felon after he had forfeited his estate and had completed any associated prison sentence. The Commonwealth offers no evidence that such a person was forever barred from acquiring property, including firearms, after his prison sentence had been served. To the contrary, the historical evidence of which we are aware suggests that, once released from incarceration,

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[17] The Commonwealth points to early American examples of the punishment being imposed. We note, however, that the punishment was not imposed for all felonies and that the English practice was not adopted wholesale in America. As stated above, St. George Tucker noted that "[c]onfiscations, forfeitures, and corruption of blood, do not follow in case of conviction or attainder for any treason or felony either in the commonwealth of Virginia, or under the federal government." 4 Blackstone & Tucker, p. 377 n.8. In support of his observation, Tucker cited to, among other things, an act of the First Congress from 1790. *See* An Act for the Punishment of Certain Crimes Against the United States, Pub. L. No. 1-9, 1 Stat. 112 (1790). In that enactment, Congress identified crimes against the United States ranging from piracy and murder on the high seas to forgery and counterfeiting for which a sentence of death could be imposed. *Id.* §§ 8-10, 14. The same enactment, however, expressly provided "[t]hat no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate." *Id.* § 24. Tucker also cited a Virginia statute that provided

> WHENSOEVER any person shall happen to be . . . convicted . . . of any . . . Felony, whatsoever, there shall in no case be a forfeiture to the Commonwealth, of dower, or of lands . . . or personal estate, but the same shall descend and pass in like manner as is by Law directed in case of persons dying intestate; nor shall any attainder work a corruption of blood; any Law or usage to the contrary in any wise notwithstanding.

Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force (1794), c. 74, § 31.

convicted felons could acquire property because their rights were "merely *suspended* during the term of the sentence." *Kanter*, 919 F.3d at 461 (Barrett, J., dissenting). That certainly is how this Court as early as the 19th century viewed the nature of such penalties. *Ruffin*, 62 Va. at 796. As the United States Court of Appeals for the Third Circuit has observed,

> Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. *See, e.g.*, Act of Dec. 21, 1771, ch. 540, N.J. Laws 343-344 ("An Act for the Preservation of Deer, and other Game, and to prevent trespassing with Guns"); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69-70 ("An Act to prevent killing deer at unseasonable times, and for putting a stop to many abuses committed by white persons, under pretence of hunting"). *So in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society*.

Range, 124 F.4th at 231 (emphasis added); *see also*, Marshall, 32 Harv. J.L. & Pub. Pol'y at 714-15 (recognizing that "[o]ne did at common law forfeit personal property ('goods and chattels') upon conviction for" a felony "[b]ut it did not follow that one could not thereafter purchase and hold new personal property—including a gun").

Absent the Commonwealth providing convincing evidence that estate forfeiture laws prevented a person from acquiring property after his period of incarceration ended, such laws are not sufficient historical analogues to justify the lifetime ban on possession of firearms or ammunition imposed by Code § 18.2-308.2.

3. Enemies of the State

Another historical analogue offered by the Commonwealth are laws that prohibited those loyal to the British crown from possessing firearms during the Revolution. Building on this analogue, the Court of Appeals took notice of English laws that denied firearms to those "who declined to join the Church of England[.]" *Ginevan*, 83 Va. App. at 22. As others have noted,

English laws from the late 17th century extending well into the 18th century "disarmed Roman Catholics—'for the better secureing their Majestyes Persons and Government.'" Marshall, 32 Harv. J.L. & Pub. Pol'y at 722 (quoting An Act for the Better Secureing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. 2, c. 15, § 4 (1688) (Eng.)). Yet others have pointed to laws that either disarmed Native Americans or imposed criminal penalties on those who provided firearms to them. *Ginevan*, 83 Va. App. at 24-25.

There is no question that such laws existed during the relevant time period and effectuated the disarmament of individuals who fell within their respective scopes. Although there is doubt about the propriety of a modern court relying on laws that denied constitutional rights based on political viewpoint, religious affiliation, or incidents of birth to deny others constitutional rights in the present,[18] we need not address that question because the referenced laws are not proper historical analogues in any event.

These laws, individually and collectively, are not proper historical analogues for Code § 18.2-308.2 because they do not share the same animating purpose. In short, when we consider "'why' the analogue[s] restricted the keeping or bearing of arms—that is, whether [their] rationale was similar to that of the new law[,]" *Wolford*, 146 S. Ct. at 2044, it is clear their purposes differed from that of Code § 18.2-308.2.

Each of the proffered analogues sought to disarm people not because the groups were perceived to pose a heightened threat of criminal activity or as punishment for prior criminal

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[18] *See Wolford*, 146 S. Ct. at 2053 (addressing Hawaii's proffer of Louisiana's odious post-Civil War Black Code as a historical analogue and concluding that "Hawaii's claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously"); *Rahimi*, 602 U.S. at 694 ("By the time of the founding, however, state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic.").

activity, but because each of the groups were perceived as disloyal to the State and as posing a threat of rebellion against the State as a whole. Disarmament was a function of being an enemy of the State, not because one was a common criminal.[19] Properly understood, these laws represent an attempt to define those who might overthrow the government as outside of the political community—in essence, people who would have fallen outside "the people" under *Bruen*'s first step.

As then-Judge Barrett observed about similar analogues, "[t]here are obvious reasons why the government would take guns away from those bent on overthrowing it, and . . . stripping rebels of their gun rights followed well-established practice in both England and the colonies." *Kanter*, 919 F.3d at 455 (Barrett, J., dissenting). However, properly understood, such enactments "do[] not say anything about disarming those who have committed other crimes[.]" *Id.* Accordingly, we do not find these proffered analogues relevant to determining the constitutionality of Code § 18.2-308.2.

4. Dispossession of dangerous individuals

The Commonwealth next points to surety and "going armed" laws from the relevant time period. The Commonwealth posits that these laws demonstrate that, consistent with the Second Amendment, those who have been determined to pose a danger to others can be disarmed.

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[19] In its analysis of these laws, the Court of Appeals described their purpose differently, categorizing them as laws designed to prevent dangerous individuals from possessing firearms, suggesting that there is no relevant difference between those who possess firearms to overthrow the government and those who may use them to commit ordinary crimes. *Ginevan*, 83 Va. App. at 21-26. We believe that there is a difference in kind and not just of degree between laws that seek to prevent armed rebellion against the legitimate government and those that seek to punish ordinary criminal wrongdoing. The first is an attack on the political community itself, and the second represents an attack on the individual victims. Both are serious, but they are not the same.

In advancing these analogues, the Commonwealth stands on firmer ground. In *Rahimi*, the Supreme Court was called upon to resolve a constitutional challenge to a conviction under 18 U.S.C. §922(g)(8), which "prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he 'represents a credible threat to the physical safety of [an] intimate partner,' or a child of the partner or individual." 602 U.S. at 684-85 (alteration in original). In concluding that the conviction at issue survived constitutional scrutiny, the Supreme Court relied upon both surety and going armed laws as proper historical analogues for the specific subsection of 18 U.S.C. §922(g)(8) at issue in *Rahimi*.[20]

Regarding surety laws, the Supreme Court noted that the regime had a significant common law pedigree, that such laws continued in the colonies and early America, and were applied to the carrying of firearms. *Rahimi*, 602 U.S. at 695-96. As the Supreme Court described the surety process, it required that "[b]efore the accused could be compelled to post a bond for 'go[ing] armed,' a complaint had to be made to a judge or justice of the peace by any person having reasonable cause to fear that the accused would do him harm or breach the peace." *Id.* at 696 (internal quotation marks and citation omitted). If, after an evidentiary hearing, a judicial officer concluded that there was a basis for the allegation, the officer would "summon the accused[,]" and, if appropriate, require the accused to post a bond promising to keep the peace. *Id.* "If an individual failed to post a bond, he would be jailed. If the individual did post a bond and then broke the peace, the bond would be forfeit." *Id.* at 695 (citation omitted). Such

[20] The Supreme Court expressly limited its analysis to a specific subsection of the federal statute, writing that "[o]ur analysis starts and stops with Section 922(g)(8)(C)(i) because the Government offers ample evidence that the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others. We need not decide whether regulation under Section 922(g)(8)(C)(ii) is also permissible." *Rahimi*, 602 U.S. at 693.

"[b]onds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason." *Id.* at 697.

Regarding so-called "going armed" laws, the Supreme Court in *Rahimi* noted that these laws represented "a particular subset of the ancient common-law prohibition on affrays." *Id.* The thrust of such laws was to criminalize riding around the countryside with dangerous weapons that were used to terrorize or otherwise threaten the citizenry. *Id.* Some states enforced prohibitions on going armed as a matter of common law, while others enacted statutes banning the practice. *Id.* at 697-98.

One such example of the statutory efforts is a 1786 Virginia statute entitled "An Act Forbidding and Punishing Affrays." *Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force* (1794), c. 21. Subject to exceptions for those involved in law enforcement, the statute prohibited a man from riding "armed by night []or by day . . . in terror of the Country[.]" *Id.* Violators were subject to arrest and, after a hearing, forfeiture of the arm in question to the Commonwealth and a sentence of imprisonment for up to one month. *Id.*

The Supreme Court reasoned that "[t]aken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed" at least temporarily. *Rahimi,* 602 U.S. at 698. From this history, the Court concluded that the nation's "tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others." *Id.* at 700. In explaining *Rahimi*'s holding, the Supreme Court made clear it was a narrow one, expressly noting that "we conclude only this: An individual found by a

court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 702.

H. Felony convictions as findings of dangerousness

The question before us now is whether Code § 18.2-308.2's permanent ban on Ginevan possessing ammunition is sufficiently similar to the temporary disarmament that accompanied the historical surety and going armed laws that allowed a conviction under 18 U.S.C. §922(g)(8)(C)(i) to survive a Second Amendment challenge in *Rahimi*. Although there are many potential points of comparison between those proffered analogues and Code § 18.2-308.2,[21] we believe the best and narrowest comparison that answers the question revolves around whether Ginevan's prior felony convictions represent a finding "by a court" that Ginevan "pose[s] a credible threat to the physical safety of another[.]" *Rahimi*, 602 U.S. at 702. In short, do any of Ginevan's prior felony convictions represent a judicial determination that he is dangerous, i.e., he poses a credible physical threat to the safety of another?

The Commonwealth argues that the General Assembly's classification of the offenses is sufficient to require such a conclusion. Alternatively, it argues that the very nature of Ginevan's prior conviction for possession of ammunition by a previously convicted felon is sufficient to support the conclusion that Ginevan has been found to be dangerous. We address each argument in turn.

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[21] One such difference is that the surety and going armed laws (as well as the subsection of the federal statute upheld in *Rahimi*) effectuated only temporary disarmament but Code § 18.2-308.2 effectuates permanent disarmament. The majority opinion in *Rahimi* did not explicitly comment on permanent bans and whether the surety and going armed analogues would support permanent as opposed to temporary deprivations of the right to keep and bear arms. Emphasizing this point in his concurring opinion, Justice Gorsuch explained that "[w]e do not resolve whether the government may disarm an individual permanently." *Rahimi*, 602 U.S. at 713 (Gorsuch, J. concurring). Much as the Supreme Court did in *Rahimi*, we leave that question for another day.

1. Legislative labels

The Commonwealth asserts that it is for the General Assembly and the General Assembly alone to determine which citizens represent dangers to others for the purposes of a ban on possession of firearms and ammunition. The argument begins with the notion that the General Assembly, in enacting Code § 18.2-308.2's ban on any convicted felon from possessing a firearm or ammunition, has at least implicitly defined as dangerous any convicted felon. The reasoning is that, because the convicted felon already has demonstrated a disregard for the laws enacted by the General Assembly, he is at least marginally more likely than a law-abiding citizen to commit a criminal act of violence. As pertinent here, there is a second level to the argument because Ginevan was previously convicted of possession of ammunition by a felon in violation of Code § 18.2-308.2 and the General Assembly has expressly defined convictions for violations of Code § 18.2-308.2 as convictions for a "violent felony offense[.]" Code § 17.1-805(C) ("violent felony offenses shall include any felony violation of . . . § 18.2-308.2").[22]

The Court of Appeals adopted the Commonwealth's position. It rejected Ginevan's argument that his prior "conviction for possessing ammunition should not be considered a violent felony" because "the legislature has spoken definitively on this issue in Code § 17.1-805(C)[.]'" *Ginevan*, 83 Va. App. at 28. Because the General Assembly had, regardless of the underlying facts, classified all violations of Code § 18.2-308.2 as violent felony offenses, the Court of Appeals concluded that Ginevan's prior conviction conclusively established that he

[22] Code § 17.1-805 does not set forth the elements of substantive criminal offenses. Rather, it creates Virginia's discretionary sentencing guideline regime. Code § 17.1-805(C) then lists the various felony convictions that will be considered "violent felony offenses" when calculating the sentencing guideline score for a defendant.

forevermore was a person who posed a credible threat to the safety of another and that no judicial review of that classification was permitted. *Id.*

Although the Court of Appeals is correct that the General Assembly sets the public policy of the Commonwealth and that courts normally must defer to those policy choices, that deference is not unlimited. As noted above, the very purpose of the Bill of Rights was to "take[] certain policy choices off the table." *Heller*, 554 U.S. at 636. No matter the policy motivation behind it, legislative actions or classifications that potentially intrude upon a constitutional right are subject to judicial review and do not receive blind deference from the courts. *Bruen*, 597 U.S. at 26. When such a conflict arises, it is the Constitution and not the legislative enactment "that demands our unqualified deference." *Id.* And that is as true of the Second Amendment right as it is of any other constitutional right. *See id.* at 70 (recognizing that the Second Amendment right "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees'" (quoting *McDonald*, 561 U.S. at 780)).

A hypothetical regarding another portion of the Bill of Rights neatly demonstrates why we do not grant unlimited deference to legislative classifications that impinge upon constitutional rights, but rather, subject them to substantive review. *Heller* makes clear that neither the rights protected by the First Amendment nor the rights protected by the Second Amendment are absolute and that both always have been subject to some manner of restriction. 554 U.S. at 595. Much as a proper historical understanding of the Second Amendment at the time of the Founding reveals that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment[,]" *Rahimi*, 602 U.S. at 702, the Supreme Court has recognized that "[f]rom 1791 to the present . . . our society . . . has permitted restrictions upon the content of speech in a few limited areas" without

those restrictions violating the First Amendment. *R. A. V. v. City of St. Paul*, 505 U.S. 377, 382-83 (1992). Thus, legislatures may, consistent with the First Amendment, enact at least some restrictions on speech that constitute defamation as historically understood. *United States v. Stevens*, 559 U.S. 460, 468 (2010).

If a legislature were to redefine its defamation law to classify any criticism of a government official as defamation, no one would contend that a court (or anyone else) would owe deference to that classification. That is because courts review the substance of laws and classifications that potentially restrict core constitutional rights and are not prevented from doing so because of the label attached to the restriction by the legislature.

The Supreme Court made this point clear in its decision in *Hemani*. Although Congress clearly had determined that habitual users of controlled substances pose some danger of misusing firearms, the Supreme Court rejected the notion that such a classification forestalled finding the restriction violative of the Second Amendment, explaining that

> we do not question that sometimes an individual's unlawful use of marijuana (or any other controlled substance) may render him a danger to others. But, again, the government disclaims the need to show anything like that in this case. *Instead, it asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing. All based on little more than its current say-so* . . . . And affording the government that kind of "broad power to designate any group as dangerous and thereby disqualify its members from having a gun" would risk allowing it to "quickly swallow" the Second Amendment.

Hemani, 608 U.S. at 793 (quoting *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting)) (emphasis added).[23]

[23] Although the legislature's classifying and labeling of a crime as a violent offense is not dispositive of whether a conviction establishes that a person "pose[s] a credible threat to the physical safety of another" sufficient to justify disarmament, *Rahimi*, 602 U.S. at 702, we do not say that it is worthy of no consideration. The legislature's classification is a factor (but only one

2. Substantive nature of the offense

The question remains whether Ginevan's conviction for possession of ammunition after previously having been convicted of a felony constitutes a judicial determination that Ginevan "pose[s] a credible threat to the physical safety of another," *Rahimi*, 602 U.S. at 702, sufficient to allow for his disarmament. It is the Commonwealth's burden to make such a showing. *Hemani*, 608 U.S. at 781. For the reasons that follow, we conclude that the Commonwealth has failed to carry that burden with respect to Ginevan and the record in this case.

A review of the elements of Ginevan's previous conviction for possession of ammunition by a felon in violation of Code § 18.2-308.2 reveals that no proof or judicial finding of Ginevan posing a credible threat to the physical safety of another was necessary for the Commonwealth to obtain the conviction.[24] As noted above, Code § 18.2-308.2 is an extremely broad statute that only requires the Commonwealth to establish that a person previously was convicted of a felony and that he possessed a firearm or ammunition. It applies equally to a convicted felon who possesses a single bullet with no means to fire it and a convicted felon who possesses an entire arsenal for the stated purpose of killing his fellow citizens. The statute simply does not require

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factor) for courts to consider in reviewing whether, as a matter of substance, the offense sufficiently includes a judicial determination of dangerousness to allow for disarmament under *Bruen* and *Rahimi*.

[24] Post-*Hemani*, at least one court has looked to the elements of an offense to see if a prior conviction constitutes a judicial finding of dangerousness sufficient to support disarmament. *See, e.g.*, *Williams v. Attorney Gen. U.S.*, No. 24-1091, 2026 U.S. App. LEXIS 31148, at *15-16 (3d Cir. 2026) (en banc) ("We look to the elements of the predicate offense, and to clarify those elements, we may also consider the charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented. If the predicate offense lacks threats or violence, then the predicate crime was likely never disarmable." (internal quotation marks and citation omitted)); *United States v. Bost*, No. 24-1719, 2026 U.S. App. LEXIS 31138, at *16 (3d Cir. 2026) (en banc) (concluding that conviction for a crime the elements of which "included a threat to commit any crime of violence with intent to terrorize another" fit "squarely within the historical tradition of disarming those who threaten violence." (internal quotation marks omitted)).

any inquiry as to whether the person is now or has ever been a danger to others. Accordingly, there is nothing inherent in a conviction for a violation of Code § 18.2-308.2 that establishes that such a conviction is a judicial finding that the convicted poses a credible threat to the safety of another.[25]

Although a review of a crime's elements is traditionally the way we would determine what judicial findings were made in support of a conviction, *Hemani* suggested another possible path. In concluding that the government had not carried its burden to establish that Hemani was dangerous, the Supreme Court left open the possibility that the government could have met its burden with evidence specific to Hemani and his situation rather than simply by relying on the statutory elements. *Hemani*, 608 U.S. at 794. Specifically, the Supreme Court noted that its ruling did

> not . . . address whether the government could bring a prosecution under § 922(g)(3) accompanied by individualized proof that the defendant's use of marijuana (or any other drug) renders him a danger to himself or others. Or proof that a certain drug always renders its users dangerous because of its potency or for some other reason. None of those issues is before us and we do not pass on them either way.

Id. Thus, although the Supreme Court's decision in *Hemani* does not endorse such an approach, neither does it foreclose it. In an abundance of caution, we will consider the state of the evidence contained in this record underlying Ginevan's convictions.

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[25] The Commonwealth limits its argument on this point to Ginevan's prior conviction for possessing ammunition as a convicted felon. The Commonwealth has not argued that his other convictions contain such an inherent finding. In fact, the Commonwealth conceded at oral argument that Ginevan's prior conviction for possession of a controlled substance with the intent to distribute was not a violent offense. As the Supreme Court has counseled, we decide this Second Amendment case "'based on the historical record' and arguments" advanced by the parties. *Hemani*, 608 U.S. at 783 (quoting *Bruen*, 597 U.S. at 26 n.6). Accordingly, we do not consider whether Ginevan's other felony convictions could include a sufficient finding of dangerousness and offer no opinion on that score.

The evidentiary record developed in the trial court in this case is understandably sparse given that the matter was resolved by way of a guilty plea. The fact that Ginevan had prior felony convictions—including convictions for possession with intent to distribute, obtaining money by false pretenses, and possession of ammunition by a convicted felon—was established in the trial court. However, the record in the trial court (and properly before us now) reveals nothing about the circumstances surrounding those convictions. We do not know whether the circumstances involved any level of violence or threat, let alone a sufficient level to allow us to conclude that those convictions could represent a finding "by a court" that Ginevan "pose[s] a credible threat to the physical safety of another[.]"[26] *Rahimi*, 602 U.S. at 702.

The lack of such evidence in the record properly before us is fatal to the Commonwealth's position. The Commonwealth bears the burden of establishing that Ginevan's disarmament "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. To do so in this case, it needed to demonstrate that at least one of his prior convictions represented a finding "by a court" that Ginevan "pose[s] a credible threat to the physical safety of another[.]" *Rahimi*, 602 U.S. at 702. The absence of such evidence means the Commonwealth failed to carry its burden. Accordingly, on this record, we must conclude that the application of Code § 18.2-308.2 to Ginevan violates the Second Amendment.

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[26] In fact, if anything, the record raises questions about whether the underlying conviction for possession of ammunition was violent. After all, although the Commonwealth charged Ginevan for possessing a firearm after previously having been convicted of the statutorily defined violent felony of possession of ammunition, it did not convict him of that offense. Instead, as part of its plea agreement, the Commonwealth amended the charge to possession of a firearm by a convicted felon within ten years of the prior felony conviction. Although we recognize that there may have been tactical reasons other than a lack of violence underlying the predicate conviction for the Commonwealth to seek and proceed under the amended indictment, the record is what the record is.

I. Limits of what we have said

As the Supreme Court has stressed in some of its recent Second Amendment cases, we emphasize that our decision today "is a narrow one." *Hemani*, 608 U.S. at 794. We only hold that a felony conviction alone does not remove one from "the people" protected by the Second Amendment and that, on the record properly before us, the Commonwealth failed to carry its burden to establish that Code § 18.2-308.2's permanent disarmament of Ginevan was sufficiently "consistent with the Nation's historical tradition of firearm regulation," *Bruen*, 597 U.S. at 24, to survive his Second Amendment challenge.

A case dealing with different offenses, a defendant with a different criminal history, or a different evidentiary record may well lead to a different conclusion. However, the issues to be considered in such a case are not "before us[,]" and therefore, "we do not pass on them either way." *Hemani*, 608 U.S. at 794.

III. CONCLUSION

For the reasons stated above, we agree with Ginevan that, as applied to him, Code § 18.2-308.2 violates the Second Amendment because the Commonwealth failed to show that the statute permanently disarming him is in keeping with the nation's historical tradition of firearm regulation. Accordingly, we reverse the judgment of the Court of Appeals, vacate Ginevan's conviction for violating Code § 18.2-308.2, and enter final judgment for Ginevan.[27]

Reversed and final judgment.

[27] Ginevan also pled guilty in the trial court to misdemeanor destruction of property in violation of Code § 18.2-137. Nothing in our decision today affects that conviction.